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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/724,090	12/21/2012	Hong Jiang	67108-408 PUS1; 812809-US	7205

46368 7590 02/02/2017

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ART UNIT	PAPER NUMBER
2156	

NOTIFICATION DATE	DELIVERY MODE
02/02/2017	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte HONG JIANG, RAZIEL HAIMI-COHEN,
and PAUL A. WILFORD

Appeal 2016-006004
Application 13/724,090
Technology Center 2100

Before JOHN A. JEFFERY, THU A. DANG, and
JENNIFER L. McKEOWN, *Administrative Patent Judges*.

DANG, *Administrative Patent Judge*.

DECISION ON APPEAL

I. STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–23, which are all of the pending claims. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

A. INVENTION

According to Appellants, the invention relates to "managing data," and more particularly, "to devices and methods for distributing data in a cloud computing system" (Spec. ¶ 1).

B. ILLUSTRATIVE CLAIM

Claim 1 is exemplary:

1. A data access management system, comprising:

a plurality of data storage devices; and

at least one data manager device configured to:

segment compressive measurements of data into a plurality of subsets, wherein each of the subsets contains measurement information for facilitating a reconstruction of at least an approximation of the data;

provide at least a first one of the subsets to a first one of the data storage devices; and

provide at least a second one of the subsets to a second one of the data storage devices;

wherein at least one of the data storage devices is selected, based on at least one criterion, for providing a user access to the at least one subset stored by the selected data storage device.

C. REJECTIONS

Claims 1–14, 22, and 23 stand rejected under 35 U.S.C. § 103(a) as unpatentable over the teachings of Ollikainen et al. (US 2008/0301775 A1; pub. Dec. 4, 2008), Go et al. (US 8,442,070 B1; issued May 14, 2013), Gladwin et al. (US 2007/0079081 A1; pub. Apr. 5, 2007), and Young (WO 00/77637 A1; pub. Dec. 21, 2000).

Claims 15–21 stand rejected under 35 U.S.C. § 103(a) as unpatentable over the teachings of Ollikainen, Go, and Young.

II. ISSUE

The principal issue before us is whether the Examiner erred in finding the combination of Ollikainen and Go (and Gladwin and/or Young) teaches or suggests segmenting compressive measurements of data into a plurality of subsets, wherein "each of the subsets contains measurement *information for facilitating* a reconstruction" (claim 1, emphasis added).

III. ANALYSIS

Appellants contend that Ollikainen cannot be modified "into one in which any one of the segments of the data is sufficient for reconstructing the data without having access to all of the segments of data" because that would "render it unsatisfactory for its intended purpose or in a way that would change the principle of operation" (App. Br. 3). According to Appellants, the Examiner's proposal "to no longer require access to both portions of the original data for reconstructing the original data" and instead "add a feature making either portion sufficient for reconstructing the original data without the other portion" would be "removing the very type of data protection taught by the *Ollikainen* reference" and "would render that arrangement unsatisfactory for its intended purpose if the proposed modification were made" (*id.* at 4). That is, Ollikainen "relies upon dividing the data into two portions and requiring access to both portions to provide security over access to the original data" (*id.*), wherein "to alter the *Ollikainen* teachings by making one portion of the data sufficient for

reconstructing the original data would remove the security feature that *Ollikainen* provides by requiring both sets of data to be recombined for reconstructing the data" (App. Br. 5).

Appellants also contend that if the Examiner instead is proposing to leave everything about Ollikainen alone and "merely to add that one of the data portions would be sufficient for reconstructing," then "the Examiner's proposed modification provides no benefit in the context of the *Ollikainen* reference" (*id.*). Thus, Appellants contend, "the Examiner is extracting from the references for purposes of attempting to establish a prima facie case, then the Examiner has not extracted enough" because "that result does not include having each subset of compressive measurements being adequate for reconstructing at least an approximation of the data" (App. Br. 7).

We have considered all of Appellants' arguments and evidence presented. However, we disagree with Appellants' contentions regarding the Examiner's rejections of the claims. Instead, we agree with the Examiner's findings, and find no error with the Examiner's conclusion that the claims would have been obvious over the combined teachings.

As a preliminary matter of claim construction, we give the claims their broadest reasonable interpretation consistent with the Specification. *See In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997). While we interpret claims broadly but reasonably in light of the Specification, we nonetheless must not import limitations from the Specification into the claims. *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1323 (Fed. Cir. 2005) (en banc).

Although Appellants contend Ollikainen cannot be modified such that "any one of the segments of the data is sufficient for reconstructing the data without having access to all of the segments of data" (App. Br. 3), i.e.,

modified to "add a feature making either portion sufficient for reconstructing the original data without the other portion" (*id.* at 4), we note that such contention is not commensurate with the claim language. That is, the claims do not require "any one of" the segments to be "sufficient for reconstructing the data without having access to all of the segments of data" or "reconstructing the original data without the other portion" (*id.* at 3–4). Thus, although Appellants contend Ollikainen "relies upon dividing the data into two portions and requiring access to both portions to provide security over access to the original data" (*id.*), nothing recited in the claims precludes requiring access to both portions to provide security.

In fact, claim 1 does not require any "reconstructing" of data (*id.*). Instead, claim 1 recites that each subset "contains measurement information *for facilitating* a reconstruction of at least an approximation of the data" (claim 1, emphasis added). We agree with the Examiner the claims merely require that "a subset measurement information only facilitate the reconstruction but does not necessarily unilateral[ly] reconstruct the data" (Ans. 3). Giving the term its broadest, reasonable interpretation, we conclude that claim 1 merely requires that each subset contains any information that *facilitates* (i.e., be useful in) a reconstruction of data.

By arguing that Ollikainen cannot be modified because that would "render it unsatisfactory for its intended purpose or in a way that would change the principle of operation" (App. Br. 3–5), Appellants appear to view the rejection in a different perspective than that of the Examiner. The issue in this Appeal is whether the ordinarily skilled artisan would have found it obvious to include information that facilitates (i.e., is useful in) a reconstruction of data in the data subsets of Ollikainen.

Here, the Examiner finds that "Ollikainen discloses a system or method for securing a data" wherein "[t]he original data is encrypted" and "[t]he encrypted data is divided into two portion[s]" (Ans. 2), and "the original data is reconstructed by retrieving a portion of the data from the remote storage and combin[ing] it with the portion stored on the local memory" (*id.* at 3). We find no error with the Examiner's finding that "[t]he retrieved portion as disclosed by Ollikainen also assist in the reconstruction of the original data" wherein "[t]he removed portion 618 as well as the initialization vector 612, the encryption key 622, and the seed number 606, which are obtained from the RMD 304, are used for restoring the original data" (*id.*, emphasis omitted (citing Ollikainen ¶ 98)). That is, given the broadest reasonable interpretation, we agree with the Examiner that Ollikainen discloses or at least suggests segmenting data, wherein information contained in the segmented data is used to assist, i.e. "for facilitating," in the reconstruction/restoring of the original data (*id.*).

The Examiner also finds that Go, "in an analogous art discloses, wherein each of the subsets contains measurement information for facilitating a reconstruction" wherein Go "reconstructs the client's packets from the fractional packets" (Final Act. 5 (citing Go, col. 3, ll. 13–16) (emphasis omitted)). That is, we agree that Go teaches and suggests using information in subsets to assist, i.e. facilitate, in the reconstruction of data. Thus, we are unpersuaded that the Examiner erred in concluding that it would have been obvious to combine Ollikainen and Go for teaching and suggesting segmenting subsets of data, each containing measurement information "for facilitating" a reconstruction (claim 1).

We are also unpersuaded by Appellants' argument that, "merely to add that one of the data portions would be sufficient for reconstructing," then "the Examiner's proposed modification provides no benefit in the context of the *Ollikainen* reference" (App. Br. 5). In particular, the claims do not require "one of the data portions would be sufficient for reconstructing" (*id.*). Nevertheless, even assuming arguendo that Appellants are correct that the Examiner's proposed modification "provides no benefit" (*id.*), our reviewing court has guided, "just because better alternatives exist in the prior art does not mean that an inferior combination is inapt for obviousness purposes." *In re Mouttet*, 686 F.3d 1322, 1334 (Fed. Cir. 2012) (citations omitted).

The Supreme Court has clearly stated the "combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398, 416 (2007). As the Examiner points out, "[t]he modification would be obvious because one of ordinary skill in the art would be able to reconstruct data packet with limited information" (Final Act. 5). We find the Examiner set forth sufficient "articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006); *see also* 35 U.S.C. § 132.

Here, Appellants have presented no evidence that providing information for facilitating a reconstruction would have been "uniquely challenging or difficult for one of ordinary skill in the art." *Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007) (citing *KSR*, 550 U.S. at 418). Instead, we find such a combination of references in the same field of endeavor of data reconstruction would have

been well within the ordinary level of skill of the art. *See KSR*, 550 U.S. at 417. In particular, we find that Appellants' invention is simply a modification of familiar prior art teachings that would have realized a predictable result to the skilled artisan. The skilled artisan is "a person of ordinary creativity, not an automaton." *Id.* at 421.

Based on the record before us, we find no error in the Examiner's rejection of claim 1, and claims 2–14, 22, and 23 falling therewith (App. Br. 3) over the combination of Ollikainen, Go, Gladwin and Young.

Appellants do not provide separate substantive arguments for claims 15–21 (*id.* at 7–8), and thus, we also affirm the rejections of claims 15–21 over Ollikainen, Go, and Young.

We note that Appellants introduce new arguments in the Reply Brief. However, it is inappropriate for Appellants to discuss for the first time in a Reply Brief matters that could have been raised in the Appeal Brief. Because Appellants advance new arguments in the Reply Brief without showing good cause, Appellants have waived such arguments. *See* 37 C.F.R. § 41.41(b)(2).

IV. CONCLUSION AND DECISION

We affirm the Examiner's rejections of claims 1–23 under 35 U.S.C. § 103(a).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED